

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPLICATION NO.565 OF 2021

(Originating from Land Application No.97 of 2020 of Ilala District Land and Housing Tribunal dated 19.07.2021 by Hon. Chairman L.R.Ruharabamu)

HUBA MOHAMED ZIMAMU APPLICANT

VERSUS

SADA MOHAMED RESPONDENT

RULING

Date of last Order: 22.11.2021

Date of Ruling: 22.11.2021

A.Z.MGEYEKWA, J

I am called upon in this matter to decide whether this court should exercise its discretion under 41 (1) and (2) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] to extend time to lodge an appeal before this court against the decision of the District Land and Housing Tribunal in Land Application No.97 of 2020. The application is supported by an affidavit deposed by Ms. Huba Mohamed Zimamu, the applicant. The

respondent resisted the application and have demonstrated their resistance by filing counter-affidavit. The first respondent filed a counter-affidavit deponed by Ms. Sada Mohamed, the respondent.

When the matter was called for hearing on 22nd November, 2021, the appellant and respondent appeared in person unrepresented.

In support of the application, the applicant was brief and straight to the point. She urged this court to adopt the affidavit to form part of her submission. The applicant pleaded technical delay as the main ground for extension of time. She pointed out that she delayed to receive the copies of the judgment and decree. Ms. Huba submitted that the judgment was delivered on 19th July, 2021 and she applied for copies of the judgment on 22nd July, 2021 and received the said copies on 21st September, 2021. It was her submission that and by the time she received the said copies, the time to file an appeal lapsed. Thus, she filed the instant application on 18th October, 2021. She claimed that she could not file an appeal without being accompanied by copies of the judgment and Decree.

The applicant went on to submit that the District Land and Housing Tribunal decision was tainted with illegality. She submitted that during the hearing of the case at the District Land and Housing Tribunal for Ilala the

Chairman proceeded with hearing in the presence of one assessor instead of at least two assessors.

On the strength of the above submission, she beckoned upon this court to grant her application with costs.

Objecting to the application, the respondent prayed for this court to adopt her counter-affidavit to form part of her submission. The respondent had not much to say rather she urged this court not to grant the applicant's application for the reason that both tribunal decisions were correctly made and they decided in her favour. The respondent went on to argue that the copies of the judgment and decree were ready for collection soon after the appellate tribunal decision. It was her further submission that the Chairman sat with two assessors during the hearing of the case.

In conclusion, the respondent urged this court to dismiss the application with costs.

Having carefully considered the submissions made by the learned counsels in their written submission and examined the affidavits and counter-affidavits, the issue for our determination is ***whether the applicant is meritorious.***

I have keenly followed the grounds contained in the applicant's affidavit and the respondent's counter-affidavit with relevant authorities. The position of the law is settled and clear that an application for extension of time is entirely the discretion of the Court. But, that discretion is judicial and so it must be exercised according to the rules of reason and justice as it was observed in the case of **Mbogo and Another v Shah** [1968] EALR 93.

Additionally, the Court will exercise its discretion in favour of an applicant only upon showing good cause for the delay. The term "good cause" having not been defined by the Rules, cannot be laid by any hard and fast rules but is dependent upon the facts obtained in each particular case. This stance has been taken by the Court of Appeal in a number of its decision, in the cases of **Regional Manager, TANROADS Kagera v Ruaha Concrete Company Ltd**, Civil Application No.96 of 2007, **Tanga Cement Company Ltd v Jumanne D. Massanga and another**, Civil Application No. 6 of 2001, **Vodacom Foundation v Commissioner General (TRA)**, Civil Application No. 107/20 of 2017 (all unreported). To mention a few.

The applicant has tried to convince this Court to find that the applicant's delay falls under technical delay which is explicable and

excusable as stated in the case of **Fortunatus Masha** (supra). However, reading the applicant's affidavit, I have noted that the applicant has failed to account for the days of delay from 21st September, 2021 when she received the copies of judgment and decree to 18th October, 2021 when she filed the instant application before this court. Therefore, failure to account for days of delay does not guarantee the applicant to file his application based on this ground of technicalities. Therefore, this ground is devoid of merit.

Regarding the issue of illegality, the legal position, as it currently obtains, is that where illegality exists and is pleaded as a ground, the same may constitute the basis for extension of time. This principle was accentuated in the **Permanent Secretary Ministry of Defence & National Service v D.P. Valambhia** [1992] TLR 185, to be followed by a celebrated decision of **Lyamuya Construction Company Limited and Citibank (Tanzania) Limited v. T.C.C.L. & Others**, Civil Application No. 97 of 2003 (unreported). In **Principal Secretary, Ministry of Defence and National Service v Devram Valambhia** [1992] TLR 185 at page 89 thus:

*"In our view, when the point at issue is one alleging illegality of the decision being challenged, **the Court has a duty, even if it means extending the time for the purpose, to ascertain the point and, if***

the alleged illegality be established, to take appropriate measures to put the matter and the record straight. [Emphasis added].

Similarly, in the cases of **Arunaben Chaggan Mistry v Naushad Mohamed Hussein & 3 Others**, CAT-Civil Application No. 6 of 2016 (unreported) and **Lyamuya Construction** (supra), the scope of illegality was taken a top-notch when the Court of Appeal of Tanzania propounded as follows:-

*"Since every party intending to appeal seeks to challenge a decision either on points of law or facts, it cannot in my view, be said that in Vaiambia's case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should, as of right, be granted an extension of time if he applies for one. **The Court there emphasized that such point of law must be that of sufficient importance and, I would add that it must also be apparent on the face of the record, such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process.**"* [Emphasis added].

Applying the above authorities, the applicant complains that the Chairman proceeded with the hearing of the case in the presence of one assessor. I have gone through the trial tribunal decision and noted the Chairman did not mention that he sat with assessors during the hearing of the case. In her affidavit particularly paragraph 6 she mentioned that

the tribunal decision was tainted with illegality. For that reason, it is my view that the raised illegality bears sufficient importance. The said point of illegality meets the requisite threshold for consideration as the basis for enlargement of time and that this alone, weighty enough to constitute sufficient cause for an extension of time.

In sum, based on the foregoing analysis I am satisfied that the above ground of illegality is evident that the present application has merit. Therefore, I proceed to grant the applicant's application to lodge appeal out of time within thirty days from the date of receiving the copy of this Ruling.

Order accordingly.

Dated at Dar es Salaam this date 22nd November, 2021.




A.Z.MGEYEKWA

JUDGE

22.11.2021

Ruling delivered on 22nd November, 2021 in the presence of both parties.




A.Z.MGEYEKWA

JUDGE

22.11.2021